Rock Technologies, Inc. *and* Local 2, International Brotherhood of Electrical Workers, AFL–CIO.
Cases 14–CA–28313 and 14–CA–28341

March 31, 2006

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the consolidated complaint. Upon a charge filed by the Union in Case 14–CA–28313 on June 9, 2005, and a charge and an amended charge filed by the Union in Case 14–CA–28341 on July 5 and August 8, 2005, respectively, the General Counsel issued an Order consolidating cases, complaint and notice of hearing on August 19, 2005, against Rock Technologies, Inc., the Respondent. On September 1, 2005, the Respondent filed an answer to the consolidated complaint. By letter dated December 5, 2005, the Respondent, by counsel, withdrew its answer.

On December 13, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On December 14, 2005, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by September 2, 2005, all the allegations in the consolidated complaint could be found to be true. On September 1, 2005, the Respondent filed an answer to the consolidated complaint. Thereafter, by letter dated December 5, 2005, the Respondent, by counsel, withdrew its answer.[1] The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the consolidated complaint must be considered to be true.[2]

Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation with an office and place of business in Chesterfield, Missouri, has been engaged in the building and construction trade as a contractor drilling holes in rock or other hard surfaces for installation of electrical systems.

During the 12-month period ending July 31, 2005, the Respondent, in conducting its business operations described above, performed services valued in excess of $50,000 in states other than the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 2, International Brotherhood of Electrical Workers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Missouri Valley Line Constructors Chapter, Inc., National Electrical Contractors Association, Inc. (the Association), has been an organization of various employers engaged in the building and construction industry as electrical contractors performing line work and underground installation of electric light and power properties, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union.

About May 20, 1998, the Respondent entered into a Letter of Assent—A, whereby the Respondent authorized the Association to bargain collectively on its behalf with the Union concerning wages, hours, and other terms and conditions of employment of its employees in the unit and agreed to be bound by the collective-bargaining agreement between the Union and the Association effective May 20, 1998, and further agreed to be bound by future agreements unless timely notice was given.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

[1] The Respondent's letter withdrawing its answer states that it is going out of business. However, there is nothing before the Board indicating that the Respondent has actually ceased operations.

[2] See *Maislin Transport,* 274 NLRB 529 (1985).

Dennis Maxey	-	President
Randy Wills	-	General Foreman

On about April 1, 2005, the exact date being presently unknown, the Respondent's General Foreman Randy Wills, at a jobsite for Ameren UE, told an employee that the Respondent was specifically working the Ameren UE job nonunion.

Between about May 20, 2005 and June 4, 2005, the exact date being presently unknown, the Respondent, by General Foreman Wills, at a jobsite for Ameren UE, told an employee that any employee involved in organizing the Union would be fired.

About June 6, 2005, the Respondent discharged its employees Frankie S. DeClue and Larry King.

The Respondent discharged DeClue and King because they formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The unit of employees of the Respondent, here called the unit, set forth in the collective-bargaining agreement described below, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On May 20, 1998, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union has ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in the Letter of Assent—A, described above, and in successive collective-bargaining agreements, the most recent of which is effective for the period September 1, 2004 to August 31, 2005.

For the period May 20, 1998 to August 31, 2005, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.[3]

About September 1, 2004, the Union entered into a collective-bargaining agreement with the Association, which is effective for the period September 1, 2004 to August 31, 2005.

At no time did the Respondent provide timely notice of termination of the assignment of bargaining authority to the Association pursuant to the terms of the Letter of Assent—A.

At all material times, by virtue of the acts and conduct described above, the Respondent has been bound by the terms of the Letter of Assent—A.

At all material times, by virtue of the acts and conduct described above, the Respondent has been bound by the terms of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union.

Since about March 1, 2005, the Respondent has failed to continue in effect the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, including by failing to:

i. Utilize the Union as the exclusive source of referrals of employees for employment on jobsites within the Union's geographical jurisdiction;

ii. Pay the wages and benefits required by the agreement;

iii. Make the required payroll deductions, provide pay stubs, and pay required state and federal taxes and social security contributions;

iv. Remit union dues to the Union; and,

v. File required benefit fund reports with the Union.

The Respondent engaged in the conduct described above without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

By letter dated June 23, 2005, the Union requested the Respondent to provide copies of employee payroll records for October 2004 to the present for employees Larry King and Frankie S. DeClue, copies of IRS payment records for October 2004 to the present for King and DeClue, and information from the personnel files of King and DeClue.

The information requested by the Union as described above is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since June 23, 2005, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSIONS OF LAW

1. By telling employees that it was working the Ameren UE job nonunion and that any employee involved in organizing the Union would be fired, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by

[3] The consolidated complaint alleges that the Respondent is a construction industry employer and that it granted recognition to the Union without regard to whether the Union had established majority status. Accordingly, we find that the relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See, e.g., *A.S.B. Cloture, Ltd.*, 313 NLRB 1012 (1994).

Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging employees Frankie S. DeClue and Larry King, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By failing and refusing to continue in effect all of the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and by failing and refusing to provide the Union with the information requested by it in its June 23, 2005 letter, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging Larry King and Frankie S. DeClue, we shall order the Respondent to offer King and DeClue full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files all references to the unlawful discharges of King and DeClue, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to continue in effect all of the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, we shall order the Respondent to honor the terms and conditions of the agreement, and any automatic renewal or extension of it. We shall also order the Respondent to make whole its unit employees for any loss of earnings and other benefits, including payment of the Respondent's portion of state and federal employment taxes and social security contributions, which they have suffered as a result of the Respondent's failure to continue in effect all the terms of the agreement. Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

We shall also order the Respondent to submit the contractually-required benefit fund reports that have not been submitted to the Union since about March 1, 2005, and to make all contractually-required benefit fund contributions that have not been made since about that date, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979). The Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[4]

In addition, we shall order the Respondent to remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and any automatic renewal or extension of it, which have not been remitted since about March 1, 2005, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, in order to remedy the Respondent's failure to utilize the Union's hiring hall as required by the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, we shall order the Respondent to offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any losses suffered by reason of the Respondent's failure to hire them.[5] Backpay is to be computed in accordance

[4] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[5] We leave to the compliance stage the determination of which, if any, employees fall into this category.

In this regard, Member Schaumber does not now decide issues concerning the validity of *J. E. Brown Electric*, 315 NLRB 620 (1994). See concurring opinions in *Brown*, and in *Coulter's Carpet*, 338 NLRB

with *F. W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding. *J. E. Brown Electric*, supra.

Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information that is necessary and relevant to its role as the limited exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested in its letter dated June 23, 2005.

ORDER

The National Labor Relations Board orders that the Respondent, Rock Technologies, Inc., Chesterfield, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that it is working the Ameren UE job nonunion.

(b) Threatening to discharge employees if they engage in union or other protected concerted activities.

(c) Discharging employees because they form, join, or assist Local 2, International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization, or engage in concerted activities, or to discourage employees from engaging in these activities.

(d) Failing and refusing to bargain collectively and in good faith with Local 2, International Brotherhood of Electrical Workers, AFL–CIO, as the limited exclusive collective-bargaining representative of the employees in the following unit during the term of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and any automatic renewal or extension of it. The unit is as described in the September 1, 2004 to August 31, 2005 collective-bargaining agreement.

(e) Failing to continue in effect all of the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement, and any automatic renewal or extension of it, including by failing to: utilize the Union as the exclusive source of referrals of employees for employment on jobsites within the Union's geographical jurisdiction; pay the wages and benefits required by the agreement; make the required payroll deductions, provide pay stubs, and pay required state and federal taxes and social security contributions; remit dues to the Union; and file required benefit fund reports with the Union.

(f) Failing to furnish the Union with information that is relevant and necessary to the performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Larry King and Frankie S. DeClue full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Larry King and Frankie S. DeClue for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Larry King and Frankie S. DeClue, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(d) Honor and abide by the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement, and any automatic renewal or extension of it, including by: utilizing the Union as the exclusive source of referrals of employees for employment on jobsites within the Union's geographical jurisdiction; paying the wages and benefits required by the agreement; making the required payroll deductions, providing pay stubs, and paying required state and federal taxes and social security contributions; remitting dues to the Union that were deducted pursuant to valid checkoff authorizations prior to the expiration of the agreement or any automatic renewal or extension of it; and filing required benefit fund reports with the Union.

(e) Submit all contractually-required benefit fund reports that have not been submitted since about March 1, 2005, and make all contractually-required benefit fund contributions that have not been made on behalf of unit employees since about that date, including any additional amounts due the funds, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, with interest, in the manner set forth in the remedy section of this decision.

(f) Make whole the unit employees for any loss of earnings and other benefits, including payment of the Respondent's portion of state and federal employment taxes and social security contributions, which they have

732 (2002). See also dissenting opinions in *M. J. Wood*, 325 NLRB 1065, 1068 fn. 9 (1998), and *Baker Electric*, 317 NLRB 335, 336 fn. 4.

suffered as a result of its refusal since about March 1, 2005 to continue in effect all of the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement, and any automatic renewal or extension of it, with interest, in the manner set forth in the remedy section of this decision.

(g) Remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and any automatic renewal or extension of it, that have not been remitted since about March 1, 2005, with interest, in the manner set forth in the remedy section of this decision.

(h) Offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's failure to hire them, with interest, in the manner set forth in the remedy section of this decision.

(i) Furnish the Union with the information it requested in its letter of June 23, 2005.

(j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its facility in Chesterfield, Missouri, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2005.

(l) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 2006

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell employees that we are working the Ameren UE job nonunion.

WE WILL NOT tell employees that we will discharge them if they engage in union or other protected concerted activities.

WE WILL NOT discharge employees because they form, join, or assist Local 2, International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization, or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 2, International Brotherhood of

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Electrical Workers, AFL–CIO, as the limited exclusive collective-bargaining representative of the employees in the following unit during the term of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and any automatic renewal or extension of it. The unit is as described in the September 1, 2004 to August 31, 2005 collective-bargaining agreement.

WE WILL NOT fail to continue in effect all of the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement, and any automatic renewal or extension of it, including by failing to: utilize the Union as the exclusive source of referrals of employees for employment on jobsites within the Union's geographical jurisdiction; pay the wages and benefits required by the agreement; make the required payroll deductions, provide pay stubs, and pay required state and federal taxes and social security contributions; remit dues to the Union; and file required benefit fund reports with the Union.

WE WILL NOT fail to furnish the Union with information that is relevant and necessary to the performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Larry King and Frankie S. DeClue full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Larry King and Frankie S. DeClue for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharges of Larry King and Frankie S. DeClue, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

WE WILL honor and abide by the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and any automatic renewal or extension of it, including by: utilizing the Union as the exclusive source of referrals of employees for employment on jobsites within the Union's geographical jurisdiction; paying the wages and benefits required by the agreement; making the required payroll deductions, providing pay stubs, and paying required state and federal taxes and social security contributions; remitting dues to the Union that were deducted pursuant to valid checkoff authorizations prior to the expiration of the agreement, or any automatic renewal or extension of it; and filing required benefit fund reports with the Union.

WE WILL submit all contractually-required benefit fund reports that have not been submitted since about March 1, 2005, and make all contractually-required benefit fund contributions that have not been made on behalf of unit employees since about that date, including any additional amounts due the funds, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL make whole unit employees for any loss of earnings and other benefits, including payment of our portion of state and federal employment taxes and social security contributions, which they have suffered as a result of our refusal since about March 1, 2005 to continue in effect all of the terms and conditions of the September 1, 2004 to August 31, 2005 collective-bargaining agreement with the Union, and any automatic renewal or extension of it, with interest.

WE WILL remit to the Union dues payments deducted pursuant to valid checkoff authorizations prior to the expiration of the September 1, 2004 to August 31, 2005 collective-bargaining agreement, and any automatic renewal or extension of it, that have not been remitted since about March 1, 2005, with interest.

WE WILL offer immediate and full employment to those applicants who would have been referred to us for employment by the Union were it not for our unlawful conduct, and make them whole for any loss of earnings and other benefits suffered as a result of our failure to hire them, with interest.

WE WILL furnish the Union with the information it requested in its letter of June 23, 2005.

ROCK TECHNOLOGIES, INC.